



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Human Services

Senator Russell E. Ruderman, Chair

Senator Karl Rhoads, Vice Chair

Wednesday, January 30, 2019, 2:45 PM

State Capitol, Conference Room 016

By

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Bill No. and Title: Senate Bill No. 210, Relating to Parental Rights.

Purpose: Requires the family court to terminate parental rights if the court determines, by clear and convincing evidence, that a natural parent committed sexual assault of the other natural parent; the child was conceived as a result of the sexual assault by the parent; and termination of parental rights is in the best interests of the child, under certain conditions. Requires the family court to suspend custody and visitation, after proper filing of a petition and a hearing, to any child whose parent or legal guardian is charged for a sexual assault or other offense, under certain conditions.

Judiciary's Position:

The Judiciary takes no position on this Bill but provides the following considerations:

1. The amendments being proposed to Hawaii Revised Statutes (H.R.S.) § 571 may be in conflict with Federal laws including the Uniform Child Custody Jurisdictional Enforcement Act (UCCJEA) and the Indian Child Welfare Act (ICWA). The mandatory provisions of this proposed Bill may be preempted by federal law, which would take precedence over state law, such as in ICWA cases.
2. In a custody case (i.e. divorce, paternity, or guardianship) in which there are already custody orders in place, it would be more appropriate to file a motion in the prior court action involving the minor child(ren). Amending the bill to address "motions" in existing



cases rather than a "petition" for a newly created and independent cause of action would provide greater clarity and less confusion with related cases. Thus, a custodial parent would just be required to file a motion.

Further, by applying the above recommendations, sub-sections (b) and (c) would not be necessary, as these sections could be very problematic in its application as written-- particularly vis-a-vis the UCCJEA and other issues of jurisdiction. Without these sections, existing court rules would apply to motions filed under these provisions.

If there are no existing court actions or court orders regarding the minor child(ren) at issue, the petitioner would have other avenues for fast action, such as via H.R.S. § 586 (domestic abuse restraining orders) and/or filing a divorce or paternity action with an Order to Show Cause for immediate protection pending resolution of the case in chief.

3. The proposed language of the Bill does not seem to allow the Court to make a determination based on the best interest of the child. The Court must be given the discretion to address transitional periods and details of the prohibition as required by the minor child and the child's age, needs, and characteristics. For example, a teenager may handle an abrupt cessation of contact better than a younger child. The Family Court is confronted by so many considerations with the families that come before it as well as different children within the same family.

Thank you for the opportunity to testify on this measure.